IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO 1015 OF 1988
DATE OF DECISION: 19.07.2006

RAJBIR ALIAS RAJ SINGH AND OTHERS

....APPELLANTS

VERSUS

KHEM CHAND

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. SUDHIR AGGARWAL, ADVOCATE
FOR THE APPELLANTS
MR. AMIT AGGARWAL, ADVOCATE
FOR THE RESPONDENT

JUDGEMENT

This is an appeal by the owner of the vehicle against the award of the Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') in MACT Case No. 84 of 20.10.1986 decided on 4.8.1988.

Brief facts of the case are that on 18.6.1986 at about 7.15 A.M. Khem Chand claimant was going on foot towards Railway Station, Farrukh Nagar on left side of the road. A truck bearing registration No. HRR 6862 driven by one Rajbir came from behind and struck against him. Due to the impact, the claimant fell down and his left leg was run-over by the truck, which was being driven at a very high speed and in rash and negligent manner. The driver of the truck sped away from the spot. The claimant was hospitalised and was subsequently referred to Lok Nayak Jai Parkash Naryan Hospital, Delhi.

The appellants controverted the allegations made in the petition and even denied the accident.

On the pleadings of the parties following issues were framed:

"1. Whether the accident in question has taken place due to rash and negligent driving of truck No. HRR-6862, by its driver Rajbir alias Raj Singh ?

2. To what amount of compensation, if any, the petitioner is entitled to and if so, from whom ? OPP
3. Whether the petition is barred by time, qua respondent Nos. 3 and 4 ?OPR
4. Relief ."

After considering the evidence on record, the Tribunal held that the accident had taken place due to rash and negligent driving of the truck, accordingly, compensation of Rs. 40,000/- was awarded to the claimant. The appellants -driver and owner of the truck, being aggrieved against the award, filed the present appeal reiterating the pleas which were raised before the Tribunal and were rejected. Further, even on quantum also it was pleaded that the amount awarded to the claimant is quite exorbitant.

I have heard counsel for the parties and with their assistance have gone through the records.

The first issue is regarding the accident having taken place due to rash and negligent driving of the driver of truck No. HRR 6862 owned by appellants No. 2 to 4. Learned Tribunal while considering ample evidence on record including the evidence of eye witness of the accident and also the persons who removed the claimant to the hospital, recorded categoric findings that the accident took place due to rash and negligent driving of Rajbir the driver of the truck, owned by appellants No. 2 to 4. In defence evidence only the driver of the vehicle namely Rajbir appeared as witness and no other respondents in the claim petition led any evidence. Even in his evidence Rajbir made a bald statement that no accident took place on 18.6.1986. There is no material on record to support the plea of the respondents in the claim petition. There is nothing on record to show that the accident had not occurred or that the truck owned by appellants No. 2 to 4 was not involved in the accident. Compared to this, there is ample evidence produced by the claimant in the form of eye witness which could not easily be brushed aside to hold against the claimant that no accident had taken place.

In view of my above discussion, I do not find any merit in the contention of the appellants to the effect that no accident had taken place

with the truck owned by appellants No. 2 to 4 or the truck was not being driven in a rash and negligent manner at the time of accident.

As far as the quantum of compensation awarded to the claimant is concerned, it has come on record that the claimant was earning a sum of Rs. 2000/- to Rs. 2500/- per month by supplying backery articles to various shopkeepers. The claimant remained under treatment in various hospital for quite some time and suffered disability of 40 % as per certificate available on record as Ex. P-4. It is further evident from the statement of Dr. Anil Mehtani that there is a mal-united fracture and infaction of bone, which has caused weakening of bones and as such the injured is having stiffness of ankle and knee joint. There is ample evidence on record of the treatment of the claimant from hospital. Firstly, the claimant was operated on 10.10.1986 and remained in hospital till 22.10.1986. He was again admitted on 5.11.1986 and discharged from hospital on 11.11.1986. Further, he was admitted on 26.11.1986 for another operation of infacted portion of bone in his left leg. Besides this, he was regularly following his treatment in OPD. Keeping all these facts in view, compensation on various accounts such as Rs. 10,000/- for medicines and special diet, Rs. 5,000/- for expenditure on transportation, Rs. 10,000/- for pain and sufferings and further a sum of Rs. 15,000/- for the disability suffered by him, total Rs. 40,000/-, as was awarded by the Tribunal, cannot in any manner be held to be excessive.

In view of above discussion, I do not find any merit in the appeal and the same is dismissed.

July 19, 2006 **(RAJESH BINDAL)**
gsv **JUDGE**